IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 985 OF 2002

Prakash Kadu Diva & Ors. .. Appellants

versus

State of Maharashtra .. Respondents

...

Mr.R.C. Makhija appointed by the Court.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 10th September 2004.

ORAL JUDGEMENT :-

1. Mr.Makhija as amicus curae to assist the Court since the Counsel appearing on behalf of the accused has continuously remained absent.

2. The appellant has challenged the judgement and order passed by the Adhoc Addl. Sessions Judge, Thane in Sessions Cases no. 511 of 1999 dated 20th June

2001. The accused was charged under section 302 read with sec.34 of the IPC for having committed the murder of one Raghunath. The incident in question took place on 6th June 1999 around 9.00 p.m. The accused came to the house of Raghunath, dragged him out of the house he was obtained mercilessly and thereafter, he was put back into the house by the accused. Raghunath was admitted in the hospital. However, he subsequently succumbed to the injuries and a case under section 302 was lodged against the accused. The prosecution case is that Raghunath had intimate relations with one Nanda and this had infiliated the accused. The prosecution examined the father of the deceased Dattatraya who had witnessed the said incident. PW no.2 Rohidas Patil had seen the injured Raghunath being brought to the house and he had made arrangements for taking him to the hospital. The accused were apprehended. PW no.3 is Nanda who also had witnessed the said incident. The trial Court has relied on the evidence of complainant Dattatraya and PW no.3 Nanda and has held that the prosecution has proved that the accused had assaulted the deceased which resulted in his death. The trial Court came to the conclusion that the offence in question would fall under section 304 Part II and after taking into

consideration few extenuating circumstances sentenced the accused to undergo imprisonment for 3 1/2 years. The learned counsel Shri Makhija has taken me through the oral evidence on record as also the judgement by the trial Court. The learned counsel has submitted that evidence of PW no.1 and PW no.3 cannot be relied upon as they are interested witnesses. PW no.3 was having intimate relations with the deceased. He submitted that the accused had infact brought the injured back into the house and this conduct shows that there is no intention to harm the deceased.

3. I have heard the learned APP appearing on behalf of the State. He submitted that the trial Court has given cogent reasons for arriving at a conclusion that the said offence is committed by accused nos.1 to 3. There was no reason to interfere with the finding given by the trial Court.

4. In my view, considering the evidence of the eye witnesses coupled with the medical evidence and also the evidence of other witnesses, it is clear that the accused had assaulted the deceased and as a result of the said injuries which was sustained by him, he died. The trial Court in my view has rightly come to

the conclusion that the offence would fall under section 304 Part II of the IPC. The accused are in jail since the date of the incident. That on 6th June 1999 by order dated 18th December 2002, this Court had released them on bail on their furnishing P.R. bond in the sum of Rs.5,000/-. However, the accused could not furnish bail as per the said order and therefore, inspite of bail being granted, they have remained in jail. As a result, they have already undergone the sentence which was imposed on them. The appeal is therefore dismissed.

5. The Jail Superintendent is directed to release the accused forthwith unless they are otherwise required in any other case. Office to intimate to the Jail Superintendent whether the accused is detained.

Appeal is disposed of in the above terms.

V.M. KANADE, J